IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6106 of 2018

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1. The Union Of India through the General Manager, Eastern Railway, Kolkata.
2. The Deputy Chief Materinal Manager, Eastern Railway, Jamalpur having its Chief and Controlling Office at and from 3, Koyalaghat Street, Kolkata-700001 (West Bengal).

... ... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Commercial Taxes, Government of Bihar, Patna.
2. The Joint Commissioner, Department of Commercial Taxes Appeal, Government of Bihar, Bhagalpur Division, Bhagalpur.
3. The Deputy Commissioner, Department of Commercial Taxes, Government of Bihar, Munger Circle, Munger
4. Reserve Bank of India through the General Manager, Kolkata.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D.K.Sinha, Sr. Adv.
		Mr.Mritunjay Kumar
For the Respondent/s	:	Mr.Vikash Kumar, SC 11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 31-01-2020 The petitioners have prayed for the following reliefs:

> "(i) For quashing the assessment order dated 09.02.2018 passed by respondent no. 3 under Section 8 of the Bihar Entry Tax Act, 1993 read with Section 28 of Bihar Value Added Tax Act, 2005 whereby the amount of tax has been assessed for assessment year 2017-18 to Rs. 4,18,39,249/- and amount of penalty has been imposed to Rs. 4,18,39,249/-total amounting to Rs. 8,36,78,498/-.

(ii) For quashing notice of demand dated 10.02.2018 under Sections 25 and 29 of the Bihat VAT Act, 2005 in Form N-VIII for the period 2016-2017 issued by the respondent No. 3 whereby petitioners have been directed to deposit Rs. 4,18,39,249/- towards amount of Tax and Rs. 4,18,39,249/- towards penalty total amounting to Rs. 8,36,78,498/- into the Government Treasury.

(iii) For quashing of the notice of demand to the extent of period 2016-17 under Section 47 of the Bihar VAT Act in Form N-XI for the amount of Rs. 23,78,418/-, Rs. 20,28,222/-, Rs. 3,63,30,250/-, Rs. 8, 36,78,498 & Rs. 3,21,68,672/- for period 2010-11(ET), 2011-2012(ET), 2015-2016(ET), 2016-2017(ET) and 2017-2018(ET), total amounting to Rs. 15,65,84,060/- communicated vide memo No. 103 dated 07.03.2018 issued by respondent No. 3 directing the respondent No. 4 to pay in the Government Treasury a sum of Rs. 15,65,84,060/- from the account of the petitioners claimed to be due to the Government as being wholly arbitrary and illegal. "

Mr. D.K.Sinha, learned senior counsel for the petitioner, invites our attention to the order dated 23.04.2018 passed by a co-ordinate Bench of this Court in CWJC No. 8586 of 2017, titled as *The Union of India & Ors. vs. The State of Bihar & Ors.*

Mr. Vikash Kumar states that the said order covers only those cases where appeals being filed by the petitioners.

Be that as it may, we find that there is equally alternative and efficacious remedy of appeal available with the petitioners under the provisions of the Bihar Value Added Tax Act, 2005 and Bihar Tax on Entry of Goods Act, 1993 and we see no reason as to why in the instant case, when the appellant has already, with respect to other transaction, preferred statutory appeal, in the instant case, such remedy cannot be resorted to.

Mr. Vikash Kumar states that if the petitioners were to prefer an appeal on or before 31.03.2020, the issue of limitation shall not be raised nor will the same come in the way of the petitioners in the decision of the appeal on merits.

Accordingly, we dispose of the present petition reserving liberty to the petitioners to file an appeal when the issue of limitation shall not come in the way of the petitioners if the same is filed within 31.03.2020.

We only hope and expect the appropriate authority to consider and decide the appeal on its own merits and with reasonable dispatch within a period of three months thereafter.

We also direct that till the decision of the appeal, no coercive steps shall be taken against the petitioners.

Further, it stands clarified that if appeal is not preferred within the aforesaid statutory period, it shall be open for the respondents to take recourse to appropriate steps in accordance with law.

It is further clarified that till the decision of the appeal, no coercive steps for recovery of the amount in question shall be taken.

(Sanjay Karol, CJ)

(Mohit Kumar Shah, J)

sujit/-

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